

Supreme Court, U. S.

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IN THE

Supreme Court of the United States

No. 78-593

SOUTH CAROLINA NATIONAL BANK,

Petitioner,

versus

NORTH CAROLINA NATIONAL BANK,

Respondent.

BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Fourth Circuit Court of Appeals was correct in affirming the Order of the District Judge, sitting as the trier of fact without a jury, that Petitioner had made final payment of the check in question and had thereby become accountable to the Respondent for the amount of the check.

II. [By way of additional sustaining ground] Whether the Petitioner became accountable to the Respondent for the amount of the check by holding the check beyond its midnight deadline, as provided by Section 10.4-302 of the South Carolina Code of Laws (1962).

STATEMENT OF THE CASE

The Statement of the Case in the Petition (Pet. 3-4) omits several of the material facts of the case. The facts are concisely stated in the Order of the trial court (Pet. 16-18). Of particular importance is the fact that, when the check in question was first presented for payment to the Petitioner (SCN), there were insufficient funds in the account of the drawer to pay the check. The check was removed from the standard flow of automated processing and manually handled by at least two different clerks. An inquiry was made to the branch bank handling the account, which instructed that the check be paid notwithstanding the insufficient funds. The check was then processed as an overdraft, entered against the account of the drawer, and stamped paid. This had occurred by the morning of July 3, 1975. It was not until July 9, 1975, that the lack of endorsement was discovered and the check was returned to the Respondent (NCNB). After NCNB supplied the endorsement and returned the check, the check was again removed from the standard flow of automated processing because of insufficient funds. It was only at this time that SCN declined to pay the check because of the insufficient funds.

In its Statement of the Case, the Petitioner contends that Judge Chapman made no findings concerning SCN's usual procedure in the process of posting. The Respondent disagrees. In his Order Judge Chapman summarized the facts concerning SCN's handling of the check¹ and in the next sentence paraphrased the language of the statute defining the process of posting.² Obviously, Judge Chapman concluded that the stated facts satisfied the statutory definition of the process

¹"Nevertheless the returns clerk for SCN examined the check and the NSF report, received advice to pay the item notwithstanding the lack of funds in the drawer's account, physically marked the check paid, and charged the customer's account creating an overdraft." (Pet. 20-21.)

²"At this time SCN had decided to pay the check and had recorded that decision." (Pet. 21.)

of posting and constituted SCN's usual procedure for handling checks under such circumstances. Judge Chapman then quoted an excerpt from the testimony of an SCN officer further demonstrating that its "usual procedure" in such factual circumstances had in fact been completed. (Pet. 21, fn. 5.)

REASONS FOR DENYING THE WRIT OF CERTIORARI

I. *The case involves no federal question and no issue of federal interest.*

Jurisdiction of this case was based upon diversity of citizenship. The case involves the interpretation of provisions of the South Carolina Code of Laws, as set out in the Petition for Writ of Certiorari (Pet. 2-3). No federal statutes or constitutional provisions are involved in any way. Neither the statutes nor the facts of the case have any relationship to the status of the parties as National Banks.

The statutes involved are portions of the Uniform Commercial Code, as adopted in the State of South Carolina, but this does not alter their status as portions of the statutory law of South Carolina. This Court has not previously accepted the task of serving as final arbiter of the Uniform Commercial Code, or of the numerous other Uniform Acts, regardless of their stated objective of uniformity or their adoption by more than one state. The Respondent would suggest that there is certainly no compelling reason to undertake that task in the present case.

II. *The decision of the Fourth Circuit Court of Appeals has not created a conflict with the decision of any other Court of Appeals.*

The Petitioner does not even suggest that there is a conflict among the several Courts of Appeals as to this question. The cases cited in the Petition (Pet. 7) are exclusively state court decisions. The single federal case mentioned³ is cited

³Citizens & Peoples National Bank of Pensacola v. United States, 570 F.2d 1279 (5th Cir. 1978).

only by way of analogy; it involves different provisions of the Uniform Commercial Code and a totally different factual situation. This is certainly not a case which would come within the provisions of Rule 19 (b) of the Supreme Court Rules dealing with decisions creating a conflict among the Courts of Appeals.

There is, in fact, no conflict between the decision of the Fourth Circuit and the state court decisions cited in the Petition. None of those cases are based upon the fact situation presented in the present case, as described in the Order of the trial court (Pet. 16-18). The trial judge gave full consideration to the definition of the process of posting and reached his decision by applying that definition to the facts of this case.

III. The case turns upon a factual finding by the trial judge, who was sitting as the trier of fact without a jury.

The basis for the decision of the trial court was its factual finding, based upon the testimony of SCN's own witness, that SCN had in fact completed its "usual procedure" for determining to pay an item and recording the payment thereof. After outlining the handling of this check by SCN, the trial court concluded: "At this time SCN had decided to pay the check and had recorded that decision." (Pet. 21.)

In both its Statement of the Case (Pet. 3-4) and its argument, SCN oversimplifies the facts of the case by omitting the facts upon which the trial court relied in its decision. This was not a check handled routinely and without human intervention by SCN's check processing department. When first processed, the check was "kicked out" because there were insufficient funds in the account of the drawer of the check. At this point the check was manually handled by a returns clerk, who communicated with a branch office as to the disposition of the check. The decision was made to pay the check notwithstanding the fact that there were insufficient funds in the account. At least two different clerks handled the

check manually and looked at it prior to processing as an overdraft. (Pet. 21, fn. 5.) It was not until a week after the decision to pay the check that another clerk discovered that the check did not have the payee's endorsement. The check was then returned to NCNB, which supplied the endorsement and returned the check to SCN. Again the check was "kicked out" because of insufficient funds, and this time SCN decided not to pay the check. (Findings of Fact, Pet. 16-17.)

Obviously, SCN's usual procedure for handling a check "kicked out" because of insufficient funds is different from its usual procedure for handling a check which is processed without incident. The finding by the trial court is clearly summarized in his Order:

Nevertheless the returns clerk for SCN examined the check and the NSF report, received advice to pay the item notwithstanding the lack of funds in the drawer's account, physically marked the check paid, and charged the customer's account creating an overdraft. At this time SCN had decided to pay the check and had recorded that decision. (Pet. 20-21.)

Perhaps the most telling evidence was the deposition testimony of SCN's officer in charge of bookkeeping, quoted at length by the trial judge in footnote 5 of his Order. (Pet. 21-22.) Referring to the acknowledged fact that a payor bank must process checks and determine whether to pay them within its "midnight deadline" (Pet. 19), this officer acknowledged that SCN held the check in question far beyond that deadline before discovering the missing endorsement because the decision had already been made to pay the check. "Because we were going to pay it, we found no problem with holding this." (Pet. 21, fn. 5.) In other words, the process of posting for that check had been completed, and there was no need to give it any further priority in terms of processing.

This discussion demonstrates that the decision below was based upon a factual decision made from the evidence by the trier of fact. Respondent submits that such a factual finding is not a subject which should be reviewed by this Court.

CONCLUSION

For the foregoing reasons, Respondent submits that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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